International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Albania under article 29 (1) of the Convention*

1. The Committee on Enforced Disappearances considered the report submitted by Albania under article 29 (1) of the Convention (CED/C/ALB/1) at its 243rd and 244th meetings (see CED/C/SR.243 and 244), held on 24 and 25 May 2018. At its 253rd meeting, held on 31 May 2018, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the report by Albania under article 29 (1) of the Convention, and the information contained therein, but it regrets that the report was not prepared in accordance with the reporting guidelines, and that the written replies did not fully and adequately address questions put in the Committee's list of issues. The Committee appreciates the open and constructive dialogue held with the delegation of the State party on the measures taken to implement the provisions of the Convention, which dispelled some of its concerns. The Committee also thanks the State party for its written replies to the list of issues (CED/C/ALB/Q/1/Add.1), and for the additional information provided in writing.

B. Positive aspects

3. The Committee commends the State party for having ratified all of the United Nations core human rights instruments and their optional protocols, as well as the Rome Statute of the International Criminal Court.

4. The Committee welcomes the fact that the State party has recognized the competence of the Committee under articles 31 and 32 of the Convention in respect of individual and inter-State communications.

5 The Committee commends the State party on the measures adopted in areas related to the Convention, including:

(a) The fact that, as a crime against humanity, the crime of enforced disappearance is not subject to a statute of limitations under article 67 of the Criminal Code;

(b) The adoption of the Juvenile Justice Code, in 2018.

6. The Committee welcomes the establishment of an inter-institutional working group on drafting reports for the implementation of international human rights conventions.

* Adopted by the Committee at its fourteenth session (22 May–1 June 2018).

7. The Committee notes with satisfaction that the State party has set up a national mechanism for the prevention of torture within the Office of the People's Advocate.

8. The Committee welcomes the visit of the Working Group on Enforced or Involuntary Disappearances to the State party (A/HRC/36/39/Add.1), in 2016.

C. Principal subjects of concern and recommendations

9. The Committee considers that, at the time of the adoption of the present concluding observations, the legislation in force in the State party to prevent and punish enforced disappearance was not fully in compliance with certain obligations incumbent on States that have ratified the Convention. The Committee encourages the State party to implement its recommendations, which have been made in a constructive and helpful spirit, with the aim of ensuring that the existing legal framework, and the way that it is implemented by the State party's authorities, is fully consistent with the rights and obligations contained in the Convention.

Consultation with non-governmental organizations (NGOs) and other members of civil society

10. The Committee notes that the process of preparing reports for submission to the Committee is predominantly interministerial and does not fully involve NGOs and other members of civil society. The Committee considers that it would be useful for the State party to request contributions from NGOs and other members of civil society at a stage that would allow their views to be taken into consideration.

11. **The Committee urges the State party to encourage contributions from NGOs and other members of civil society, in particular those carrying out activities related to the Convention, or in similar fields, at the most appropriate stage of the drafting of reports to the Committee. The Committee recommends that the State party also involve such actors in follow-up activities to concluding observations.**

1. Definition and criminalization of enforced disappearance (arts. 1–7)

Definition of enforced disappearance

12. The Committee notes that the first paragraph of article 109 (c) of the Criminal Code provides elements of a definition of enforced disappearance, and criminalizes it in accordance with articles 2 and 4 of the Convention. However, the Committee regrets that, while article 109 (c) provides for penalties, elements concerning the responsibility of the superior and certain aggravating circumstances relating to the crime of enforced disappearance, it does not cover the ordering, solicitation or inducement of, or attempts to commit, or complicity or participation in the commission of an enforced disappearance, as provided for in article 6 (1) of the Convention. Rather, such elements appear under the general regime of articles 22–27 of the Criminal Code. It considers that article 109 (c) is formulated in an unclear manner, and that it does not paint a full picture of the legal regime in the Criminal Code related to the crime of enforced disappearance. The Committee considers that a clear definition of enforced disappearance as a separate offence would also enable the State party to fully comply with its obligation under article 4 of the Convention, which is closely related to other treaty obligations concerning legislation, such as those in articles 6 (1) (a) and 7–8 (arts. 2, 4 and 6–8).

13. **The Committee recommends that the State party consider reformulating article 109 (c) of the Criminal Code to provide a clear and distinct definition of enforced disappearance, and to specify the penalties applicable to it, in line with articles 2 and 4 of the Convention. Such reformulation should further clarify the domestic legal regime regarding both enforced disappearance and the obligations related to it, such as those contained in articles 6 (1) (a) and 7.**

Persons or groups of persons acting without the authorization, support or acquiescence of the State

14. The Committee notes that there is some uncertainty in domestic criminal law concerning the application of the Convention to the actions of persons or groups of persons acting without the authorization, support or acquiescence of the State, including with regard to other related offences, such as trafficking in persons (art. 3).

15. **The Committee encourages the State party to explicitly specify in its domestic legislation the measures set out in article 3 of the Convention relating to the acts defined in article 2 of the Convention committed by persons or groups of persons acting without the authorization, support or acquiescence of the State.**

Definition of enforced disappearance as a crime against humanity

16. The Committee notes that article 74 of the Criminal Code refers to enforced disappearance as one of the acts constituting a crime against humanity. However, article 74 does not provide a definition of enforced disappearance that fully encapsulates the provisions of article 5 of the Convention. The Committee regrets that enforced disappearance as a crime against humanity is not fully incorporated into the Criminal Code (art. 5).

17. **The Committee urges the State party to adopt the measures necessary to incorporate into its Criminal Code a definition of enforced disappearance as a crime against humanity, in application of article 5 of the Convention.**

Order from a superior

18. The Committee notes the information provided by the State party that the Code of Administrative Procedures, Act No. 108/2015 on the State Police and Law No. 10032 of 11 December 2008 on Prison Police, as amended, provide guarantees to subordinates wishing to disobey an order to carry out an enforced disappearance, and open the possibility of initiating disciplinary measures against the superior in question if the order is executed. The Committee points out that these provisions are unclear and not specific enough, and do not cover all categories of persons envisaged in article 6 (2) of the Convention. Thus, they offer insufficient protection to any subordinate wishing to disobey an order from a superior to commit an enforced disappearance. Therefore, the Committee considers that these provisions do not appear to offer the guarantees required under article 6 (2) of the Convention (art. 6).

19. **The Committee recommends that the State party revise the provisions of the above-mentioned legislation, and expressly specify that no order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance, in line with article 6 (2) of the Convention. The Committee also recommends that the State party strengthen protection and legal guarantees for subordinates wishing to disobey an order from a superior to commit an enforced disappearance.**

Aggravating and mitigating circumstances

20. The Committee notes that article 109 (c) of the Criminal Code provides for severer penalties when the crime of enforced disappearance is committed in specific circumstances, such as in the event of the death of the disappeared person or the commission of an enforced disappearance in respect of pregnant women, minors, persons with disabilities or other particularly vulnerable persons. Article 109 (c), however, does not indicate the mitigating circumstances that apply to the crime of enforced disappearance, as set out in article 7 (2) (a) of the Convention. The Committee also notes that the Criminal Code establishes a general regime of mitigating and aggravating circumstances (arts. 48 and 50). Nonetheless, the Committee believes that such provisions of the Criminal Code do not adequately and fully address all elements set out in article 7 of the Convention (art. 7).

21. **The Committee encourages the State party to establish in its Criminal Code explicit mitigating and aggravating circumstances for the act of enforced**

disappearance, covering all the elements set out in article 7 (2) of the Convention. It also recommends that the State party ensure that the mitigating circumstances in no way obviate the imposition of the appropriate punishment.

2. Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8–15)

Continuous nature of the offence of enforced disappearance, and statute of limitations

22. While noting the declaration of the State party's delegation that the continuous nature of enforced disappearance is recognized under domestic criminal legislation, the Committee observes that article 109 (c) of the Criminal Code, while defining and criminalizing enforced disappearance, does not recognize the crime's continuous nature. The Committee notes the information from the State party that the crime of enforced disappearance is governed by the ordinary statute of limitations for criminal prosecution provided for in article 66 of the Criminal Code. According to article 66, the statute of limitations in respect of enforced disappearance commences from the moment when the offence is committed, and not from the moment when the offence ceases as is stipulated in article 8 (1) (b) of the Convention (art. 8).

23. **The Committee recommends that the State party revise its Criminal Code to specifically recognize the continuous nature of the offence of enforced disappearance, and ensure that the statute of limitations for criminal proceedings reflects the extreme seriousness of the offence of enforced disappearance and commences only when the crime ceases.**

Jurisdiction

24. The Committee notes that article 7 (a) of the Criminal Code establishes jurisdiction over foreign nationals committing criminal offences outside the territory of the State party for which specific laws or international agreements to which Albania is a party provide for the applicability of Albanian criminal law. While noting the information provided by the State party in its replies to the list of issues (see CED/C/ALB/Q/1/Add.1, para. 40), the Committee is unclear as to whether jurisdiction is established when the crime of enforced disappearance is committed by a foreign national outside of the territory of a State party against another foreign national (art. 9).

25. **The Committee encourages the State party to take the measures necessary to ensure that its criminal law fully complies with the provisions of article 9 (2) of the Convention.**

Military courts

26. The Committee notes the explanations provided in the State party's replies to the list of issues that, when a crime of enforced disappearance is carried out by a member of the military, the ordinary courts have jurisdiction to adjudicate the offence (see CED/C/ALB/Q/1/Add.1, para. 44), and that there is no case provided for in law or in the Constitution in which any given military institution may obtain this competence, including during wartime or a state of emergency (ibid., para. 57). However, the Committee observes that information contained in the State party's report (see CED/C/ALB/1, paras. 31–32), and in its replies to the list of issues (see CED/C/ALB/Q/1/Add.1, para. 44), suggests that the military authorities may actually have competence to investigate and prosecute the crime of enforced disappearance, contradicting the above-mentioned information. The Committee recalls its position that, as a matter of principle, military courts cannot offer the independence and impartiality required by the Convention to hear cases of human rights violations such as enforced disappearance (art. 11).

27. **The Committee, recalling its statement on enforced disappearances and military jurisdiction, recommends that the State party take the measures necessary to clarify its legislation, in order to ensure that all cases of enforced disappearance remain expressly outside military jurisdiction and can be investigated and tried only by ordinary courts (see A/70/56, annex III, para. 5).**

3. Measures to prevent enforced disappearances (arts. 16–23)

Non-refoulement

28. The Committee notes that Law No. 121/2014 on the right to asylum (art. 6) refers to the risk of an asylum seeker being subjected to enforced disappearance as a basis for non-refoulement, but it makes no provision for the application of non-refoulement in the other situations listed in article 16 (1) of the Convention. The Committee also notes that article 11 of the Criminal Code, on extradition, makes no specific reference to enforced disappearance. The Committee further notes that the State party provides no information on clear and specific mechanisms and/or procedures to assess and verify the risk a person faces of being subjected to enforced disappearance in the country of destination (art. 16).

29. **The Committee recommends that, in its domestic legislation, the State party consider explicitly prohibiting the expulsion, return, surrender or extradition of a person where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance, in accordance with article 16 (1) of the Convention. The Committee encourages the State party to take any measures necessary to ensure that there are clear and specific mechanisms and/or procedures to assess and verify the risk of a person being subjected to enforced disappearance in the country of destination.**

Training on the provisions of the Convention

30. The Committee takes note of the information concerning the numerous training programmes offered to police and prison officers on human rights, including on standards governing the deprivation of liberty. The Committee notes, however, that such programmes are run only infrequently and do not specifically cover the Convention (art. 23).

31. **The Committee recommends that the State party ensure that all law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges, prosecutors and other officials responsible for the administration of justice, receive appropriate and regular training on the provisions of the Convention, in conformity with article 23 of the Convention.**

4. Measures to provide reparation and to protect children from enforced disappearance (arts. 24–25)

Definition of victim

32. The Committee takes note of the provisions of article 58 of the Code of Criminal Procedure, which expands the rights of victims in criminal matters. However, the Committee is concerned about the lack of a definition of the term "victim" in that Code, as set out in article 24 (1) of the Convention. While noting the explanations provided by the delegation of the State party concerning case-by-case determinations of "victims", the Committee recalls that article 24 (1) provides for a definition of "victim" of a broader nature, encompassing not only the disappeared person but also any individual who has suffered harm as a direct result of the enforced disappearance. The Committee also notes that article 58 does not explicitly mention the victim's right to know the truth regarding the circumstances of the enforced disappearance. Therefore, the Committee considers that the legislation of the State party does not fully conform to the broader definition contained in article 24 (1) of the Convention (art. 24).

33. **The Committee recommends that the State party include a definition of victim of enforced disappearance in its criminal legislation in accordance with article 24 (1) of the Convention, in order to ensure the full enjoyment, by any individual who has suffered harm as the direct result of an enforced disappearance, of the rights set forth in the Convention. The State party should also ensure that article 58 of the Criminal Code provides for the right of the victims to know the truth regarding the circumstances of the enforced disappearance, in accordance with article 24 (2) of the Convention.**

Right to receive reparation and prompt, fair and adequate compensation

34. The Committee notes that article 58 of the Code of Criminal Procedure provides for the rights of the victim of a criminal offence to request compensation for the damage, but does not ensure other forms of reparation specified under articles 24 (4) and (5), of the Convention, such as restitution, rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition (art. 24).

35. **The Committee recommends that the State party take measures to broaden existing reparation to include forms such as restitution, rehabilitation, satisfaction and guarantees of non-repetition, in accordance with article 24 (5) of the Convention.**

Enforced disappearances during the communist regime

36. The Committee welcomes the various initiatives taken by the State party to address the human rights violations, in particular the enforced disappearances, that occurred during the communist period from 1944 to 1991. The Committee observes that the State party has taken measures to compensate victims and their families, and has set up specific institutions to study and identify political persecution by the communist regime, and to raise public awareness in that regard. The Committee notes that the State party has created a Disappeared Persons Section within the Institute for Integration of the Former Politically Persecuted, which is mainly tasked with finding persons subjected to enforced disappearances during the communist regime, in particular by collecting evidence and information on the victims, and by exhuming human remains. The Committee welcomes the negotiation of an agreement with the International Commission on Missing Persons. However, it regrets that the State party has not yet carried out investigations, with a view to identifying and prosecuting those responsible, and to providing all forms of reparation to victims and their families, in accordance with article 24 of the Convention.

37. **The Committee encourages the State party to redouble its efforts to effectively shed light on enforced disappearances that took place during the communist regime, in particular regarding the fate and the whereabouts of the disappeared persons, and to consider investigating such crimes, prosecuting those responsible and providing all forms of reparation to the victims and their families, in accordance with article 24 of the Convention.**

Legislation concerning the wrongful removal of children

38. The Committee notes the provisions of article 109 (c) of the Criminal Code, which contain all the elements of article 25 (1) (a) of the Convention. Domestic legislation offers general protection to children against violence, exploitation, neglect and abuse, but does not provide for specific protection for children subjected to enforced disappearance. The Committee also notes that the State party has provided no appropriate information on procedures set up to re-establish the true identity of a child subjected to enforced disappearance, nor has it informed the Committee of the legal procedures in place to review, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance or on the legislation thereto, to be in full compliance with article 25 (1) (b), (2) and (4) (art. 25).

39. **The Committee urges the State party to take necessary and specific measures to ensure the effective protection of children against enforced disappearance, in particular by: (a) setting up procedures aimed at re-establishing the true identity of children in case of the falsification, concealment or destruction of documents attesting thereto; (b) adopting legislation and establishing procedures to review, and, where appropriate, to annul any adoption or placement of children originating from an enforced disappearance; and (c) concluding mutual assistance agreements with other States for the search for and identification and location of children subjected to enforced disappearance.**

D. Dissemination and follow-up

40. **The Committee wishes to recall the obligations undertaken by States when becoming parties to the Convention and, in this connection, urges the State party to ensure that all the measures it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations it assumed when becoming party to the Convention and other relevant international instruments. The Committee particularly urges the State party to ensure the effective investigation of all enforced disappearances and the full satisfaction of the rights of victims, as set forth in the Convention.**

41. **The Committee also wishes to emphasize the particularly cruel effect of enforced disappearances on the human rights of women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisal as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including identity substitution. In this context, the Committee places special emphasis on the need for the State party to ensure that gender perspectives and child-sensitive approaches are used in implementing the rights and obligations set out in the Convention.**

42. **The State party is encouraged to disseminate widely the Convention, its report submitted under article 29 (1) of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations, in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society, in particular organizations of victims, in the actions taken in line with the present concluding observations.**

43. **Noting that the State party submitted its core document in 2012 (HRI/CORE/ALB/2012), the Committee invites the State party to update it in accordance with the requirements for the common core document contained in the harmonized guidelines on reporting under the international human rights treaties (see HRI/GEN.2/Rev.6, chap. I).**

44. **In accordance with the Committee's rules of procedure, the State party should provide, by 1 June 2019 at the latest, information on the implementation of the recommendations contained in paragraphs 31, 33 and 39.**

45. **Under article 29 (4) of the Convention, the Committee requests the State party to submit, by no later than 1 June 2024, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention, in a document prepared in accordance the guidelines on the form and content of reports to be submitted by States parties under article 29 of the Convention (see CED/C/2, para. 39). The Committee encourages the State party to promote and facilitate the participation of civil society, in particular organizations of victims, in the preparation of this information.**